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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,110	12/10/2003	Fabien Lavoie	15680-lus PN/df	4511
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OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			EXAMINER GREENHUT, CHARLES N	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 06/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/731,110	Applicant(s) LAVOIE, FABIEN	
	Examiner Charles N. Greenhut	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**I. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 1-6 and 10-12 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES (US 2,902,101) in view of CARSTENS (US 6,336,642 B1).

1.1. With respect to claim 1, CATES discloses a support surface (47), endless track (38), power source (33) and an anti-roll device being at least one arm (52) projecting longitudinally away from the support surface (47). CATES fails to disclose that the arm is completely above a plate of an undersurface of the apparatus. CARSTENS teaches an arm completely above a plane of an undersurface (Fig. 4). It would have been obvious to one of ordinary skill in the art to modify CATES with the safety device of CARSTENS in order to prevent falling down the stairs.

1.2. With respect to claim 2, CATES additionally discloses an arm projecting rearwardly (52).

1.3. With respect to claim 3, CATES additionally discloses the arm displaceable from a retracted position, not projecting, to a projecting position. (Col. 2 Li. 68 et seq.)

1.4. With respect to claim 4, CATES additionally discloses actuation of the arm is automated as a function of inclination (53).

1.5. With respect to claim 5, CATES additionally discloses a brake (Col. 3 Li 43-47).

- 1.6. With respect to claim 6, CATES additionally discloses a roller system selectively deployable for displacing the apparatus without the endless track (49).
- 1.7. With respect to claim 10, CATES additionally discloses the support surface pivotally displaceable.
- 1.8. With respect to claim 11, CATES additionally discloses the support surface displaceable with respect to a height.
- 1.9. With respect to claim 12, CATES additionally discloses a cylindrical roller (Col. 3 Li. 38-41).
2. Claim(s) 7-9 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES in view of CARSTENS and further in view of SOWERBY (US 2,873,870).
  - 2.1. With respect to claim 7, CATES fails to teach the roller system having an actuated mechanism for deploying the rollers. SOWERBY teaches the roller system having an actuated mechanism for deploying the rollers (106)/(122). It would have been obvious to one of ordinary skill in the art to modify CATES with the actuation system of SOWERBY in order to facilitate conversion between the endless track and wheels, thereby allowing the vehicle to quickly adjust to a different terrain.
  - 2.2. With respect to claim 8, CATES fails to teach four rollers, one in each corner. SOWERBY teaches four rollers, one in each corner. It would have been obvious to one of ordinary skill in the art to modify CATES with the four rollers, one in each corner of SOWERBY in order to improve stability.
  - 2.3. With respect to claim 9, CATES additional teaches a swivel mechanism (Col. 3 Li. 39).

3. Claim(s) 13-16 and 19-20 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES in view of THUNELL (US 4,278,395 A).

3.1. With respect to claim 13, CATES discloses a support surface (47), endless track (38), power source (33) , and roller (Col. 3 Li. 38-41). CATES fails to specify the details of the roller. It is well-known to cooperate an endless track propelling a load with a cylindrical roller to transfer a load to or from a support surface as demonstrated, for example, by THUNELL. It would have been obvious to one of ordinary skill in the art to modify CATES with a roller as taught by THUNELL in order to facilitate loading and unloading the load-supporting surface.

3.2. With respect to claim 14, CATES additionally discloses a brake (Col. 3 Li 43-47).

3.3. With respect to claim 15, CATES additionally discloses a roller system selectively deployable for displacing the apparatus without the endless track (49).

3.4. With respect to claim 16, CATES additionally discloses a portion of the endless track exposed beyond the support surface.

3.5. With respect to claim 19, CATES additionally discloses the support surface pivotally displaceable.

3.6. With respect to claim 20, CATES additionally discloses the support surface displaceable with respect to a height.

4. Claim(s) 17-18 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES in view of THUNELL and further in view of SOWERBY.

4.1. With respect to claim 17, CATES fails to teach four rollers, one in each corner. SOWERBY teaches four rollers, one in each corner. It would have been obvious to

one of ordinary skill in the art to modify CATES in view of THUNELL with the four rollers, one in each corner of SOWERBY in order to improve stability.

4.2. With respect to claim 18, CATES additional teaches a swivel mechanism

## **II. Response to Applicant's Arguments**

Applicant's arguments entered 5/14/07 have been fully considered but are not persuasive.

1. Applicant argues that claim 1 is not rendered obvious by CATES in view of CARSTENS because one of ordinary skill in the art would not be motivated to modify CATES with the teachings of CARSTENS to arrive at the claimed invention. This argument is not persuasive. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some reason to do so. It would have been obvious to one having ordinary skill in the art to employ the safety device of CARSTENS in order to prevent tipping during downward movement on the stairs. Applicant further asserts that the limitation directed toward the support arm completely above a plane of the undersurface is not met because the anti-roll device is always in contact with the staircase. Applicant cites column 2 lines 38-39 in support of this proposition, however this appears to be in error since no such support is found. The CARSTENS device is clearly intended for use with upward or downward movement of the climber (e.g., Col. 4 Li: 44) and a number of embodiments are shown to enable this. Applicant's assertion that backward movement is prevented with the anti-roll device of CARSTENS is an assumption that is clearly without merit. The device is only engaged in the event of danger (See, e.g., Col 5 Li. 14 et seq.)

2. Applicant argues that claim 1 is not rendered obvious by CATES in view of CARSTENS because CARSTENS teaches away from the use of conveyors or crawlers. This argument is not persuasive. Firstly, Applicant is incorrectly applying the doctrine of "teaching away." In order to rebut a prima facie case of obviousness, the Applicant may show that the prior art teaches away *from the claimed invention*. Secondly, CARSTENS does not teach away from conveyors or crawlers, it merely discusses the disadvantages of conveyors or crawlers at least three stairs long. The fact that CARSTENS discusses the disadvantages of conveyors as long as those shown in CATES in no way teaches away from the claimed invention. Furthermore, CATES itself has addressed the problem that CARSTENS alleges it would not have, by providing its own anti-roll device.
3. Applicant argues that claim 13, is not rendered obvious by CATES in view of THUNELL because the references, alone or in combination do not teach the load being carried on the cylindrical roller onto the support surface by traction of the exposed portion of the endless track on the load. This argument is not persuasive. Firstly, the limitations at issue are functional in nature and therefore are met by an apparatus capable of performing that function. Secondly, the function of employing an endless track to carry a load, via traction, on a roller and onto a support surface is well-known as demonstrated by THUNELL. CATES describes employing a roller, but does not disclose details of the roller and describe using the track to load the support surface. Taken in combination with THUNELL, however, it would have been obvious to one having ordinary skill in the art to orient the roller and track of CATES relatively to each other as shown by THUNELL and further, to employ the track to load the support surface of CATES.

### **III. Conclusion**

1. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access



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(toll-free).

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